

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
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2004 APR -5 P 3:31

MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY  
Plaintiff

v.

ADP MARSHALL, INC., a FLUOR  
DANIEL COMPANY, and FIREMAN'S  
FUND INSURANCE COMPANY,  
Defendants

CIVIL ACTION  
NO. 04 CV 10203 PBS

\*\*\*\*\*

ADP MARSHALL, INC.,  
Plaintiff-in-Counterclaim

vs.

MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY,  
Defendant-in-Counterclaim

\*\*\*\*\*

ADP MARSHALL, INC.,  
Third-Party Plaintiff

ALLIED CONSULTING ENGINEERING  
SERVICES, INC., ANDOVER CONTROLS  
CORPORATION, R & R WINDOW  
CONTRACTORS, INC., and DELTA  
KEYSPAN, INC. n/k/a DELTA  
KEYSPAN, LLC.  
Third-Party Defendants

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**THIRD-PARTY DEFENDANT, DELTA KEYSPAN, INC.'S ANSWER TO THE  
THIRD-PARTY COMPLAINT AND ITS JURY CLAIM**

**DELTA KEYSPAN, INC. DEMANDS A JURY TRIAL ON ALL ISSUES SO  
TRIABLE**

Now comes the third-party defendant, Delta Keyspan, Inc., now known as Delta Keyspan, LLC, and makes this its answer to the third-party plaintiff's third-party

complaint. Numbered paragraphs correspond to those in the third-party plaintiff's third-party complaint.

**FIRST DEFENSE**

1. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
2. The third-party defendant admits.
3. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
4. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
5. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
6. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
7. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
8. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
9. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.

10. The third-party defendant admits that it entered into a contract but has insufficient information or knowledge to admit or deny the remaining allegations of this paragraph.
11. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
12. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
13. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
14. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
15. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
16. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
17. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
18. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
19. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.

20. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
21. The third-party defendant denies.
22. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
23. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
24. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
25. The third-party defendant admits.
26. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
27. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
28. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
29. The third-party defendant denies the allegations directed against it. The third-party defendant can neither admit nor deny the remaining allegations as it is without information or knowledge sufficient to form a belief as to their truth.

**COUNT I**

30. The third-party defendant restates its answers to the allegations contained in paragraphs 1 through 29 as if each were set forth fully herein.

31. The third-party defendant denies.

32. The third-party defendant denies.

WHEREFORE, the third-party defendant denies that the third-party plaintiff is entitled to any attorney's fees, payment of judgments, a decree declaring that the third-party defendant breached any contract or an order that it must indemnify or hold harmless the third-party plaintiff, or any other relief.

### **COUNT II**

33.-35. Count II is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

### **COUNT III**

36.-38. Count III is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

### **COUNT IV**

39.-41. Count IV is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

### **COUNT V**

42. The third-party defendant restates its answers to the allegations contained in paragraphs 1 through 41 as if each were set forth fully herein.

43. The third-party defendant denies.

WHEREFORE, the third-party defendant denies that the third-party plaintiff is entitled to any attorneys' fees, payment of judgments against it, or any other relief.

**COUNT VI**

44.-45. Count VI is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

**COUNT VII**

46.-47. Count VII is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

**COUNT VIII**

48.-49. Count VIII is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

**SECOND DEFENSE**

The third-party defendant says that plaintiff's and/or the third-party plaintiff's alleged loss and damages were caused in whole or in part by the plaintiff's and/or the third-party plaintiff's own negligence, which was greater than any negligence of the defendant.

**THIRD DEFENSE**

The third-party defendant says that the plaintiff's and/or the third-party plaintiff's alleged injuries and damage were caused by a person or persons for whose conduct the third-party defendant is not responsible.

**FOURTH DEFENSE**

The third-party defendant says that third-party plaintiff's suit is subject to dismissal because of insufficiency of service of process, pursuant to Fed. R. Civ. P. 12(b)(5) and/or insufficiency of process pursuant to Fed. R. Civ. P. 12(b)(4).

**FIFTH DEFENSE**

The third-party defendant says the alleged contract and indemnity provision is in violation of M.G.L. c. 149 §29C.

**SIXTH DEFENSE**

The third-party defendant says that this action was not commenced within the time required by the laws or contract provisions providing therefore.

**SEVENTH DEFENSE**

The third-party defendant says that third-party plaintiff's complaint fails to state a claim on which relief can be granted.

**EIGHTH DEFENSE**

The third-party defendant says that the third-party plaintiff's alleged loss and damages and injury was caused solely by the negligence and/or fault of the third-party plaintiff.

**NINTH DEFENSE**

The third-party defendant says that the alleged contract and/or indemnification agreement does not apply to the plaintiff's and/or the third-party plaintiff's loss and damages.

**TENTH DEFENSE**

The third-party defendant says that third-party plaintiff failed to comply with the terms and conditions of the alleged contract and/or indemnification agreement.

**ELEVENTH DEFENSE**

The third-party defendant says that the third-party plaintiff's liability to the plaintiff, if any, arises from the third-party plaintiff's sole, actual and primary negligence or wrongdoing and through no fault or negligence of the third-party defendant and that therefore the third-party plaintiff is not entitled to contribution or indemnity.

**TWELFTH DEFENSE**

The third-party defendant says that the plaintiff's and/or the third-party plaintiff's claims are waived and/or barred for failure to follow the terms of the contract.

**THIRTEENTH DEFENSE**

The third-party defendant says that the plaintiff and/or the third-party plaintiff's are estopped from making warranty claims because the contractual warranty period has lapsed.

**FOURTEENTH DEFENSE**

The plaintiff's and third-party plaintiff's are barred and/or precluded by the doctrine of res judicata (both issue and claims preclusion).

**FIFTEENTH DEFENSE**

The third-party defendant says that the effective term of any bond has lapsed.

**SIXTEENTH DEFENSE**

The third-party defendant says that the plaintiff and/or the third-party plaintiff failed to follow the procedure for making a bond claim.

**SEVENTEENTH DEFENSE**

The third-party defendant says that a claim cannot be made on a performance bond where a principal has substantially performed under the contract.



**EIGHTEENTH DEFENSE**

The third-party defendant says that the plaintiff's and/or the third-party plaintiff's claims are waived because it failed to follow the contract procedure for the resolution of damages in, and interpretation of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials.

**NINETEENTH DEFENSE**

The third-party defendant says that the issues raised by this litigation are subject to arbitration and/or administrative process.

**TWENTIETH DEFENSE**

The third-party defendant says that any claim of the third-party plaintiff is barred by its failure to give adequate and timely notice.

**TWENTY-FIRST DEFENSE**

The third-party defendant says that the claims against it are barred by the doctrine of waiver and/or estoppel.

**TWENTY-SECOND DEFENSE**

The third-party defendant says that the claims against it are barred by laches.

**TWENTY-THIRD DEFENSE**

The claims against Delta Keyspan, Inc. are barred because Delta Keyspan, Inc. has performed all of its obligations under its agreement with ADP Marshall, Inc.

**TWENTY-FOURTH DEFENSE**

The claims against Delta Keyspan, Inc. are barred by the terms of its agreement with ADP Marshall, Inc.

**TWENTY-FIFTH DEFENSE**

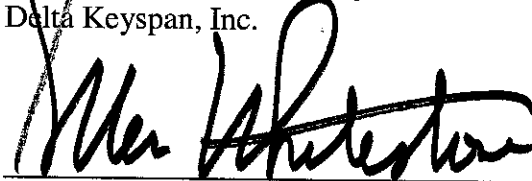
If the plaintiff establishes liability against ADP Marshall, Inc., it will be as a result of the direct and active negligence or other wrongdoing of ADP Marshall, Inc. and not as a result of alleged acts, errors or omissions of Delta Keyspan, Inc. Accordingly, ADP Marshall, Inc. would not be entitled to recover from Delta Keyspan, Inc.

**TWENTY-SIXTH DEFENSE**

Delta Keyspan, Inc. says that it has been misnamed. Its current name is Delta Keyspan, LLC.

**DELTA KEYSpan, INC., n/k/a DELTA KEYSpan, LLC CLAIMS A JURY TRIAL TO THE FULLEST EXTENT PERMITTED BY LAW**

Attorney for the Third-Party Defendant,  
Delta Keyspan, Inc.

A handwritten signature in black ink, appearing to read "Allen Whitestone", written over a horizontal line.

Allen Whitestone, Esq.  
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**CERTIFICATE OF SERVICE**

I, Allen Whitestone, hereby certify that I have mailed the foregoing document, postage prepaid, to:

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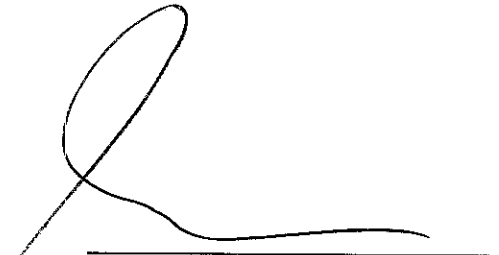
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DATED:  2, 2004

  
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